RICHARD G. BRADLEY

IBLA 84-846 Decided November 8, 1985

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring the Aparition #2 lode mining claim null and void ab initio. CMC 204217.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Patent--Patents of Public Lands: Effect--Patents of Public Lands: Reservations

Where public lands are disposed of with a reservation of minerals to the United States, the reserved minerals are not subject to location under the mining laws in the absence of specific statutory or regulatory authorization. Minerals reserved to the United States in a patent to the City of Rifle, Colorado, are not subject to the mining law, since no statute or regulation provides for their disposition under the mining law.

APPEARANCES: Richard G. Bradley, Silt, Colorado, pro se. Don H. Sherwood, Esq., and James M. King, Esq., Denver, Colorado, for the City of Rifle, Colorado.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Richard G. Bradley has appealed from an August 3, 1984, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring the Aparition #2 lode mining claim null and void ab initio. Appellant and four other individuals located the Aparition #2 claim on April 18, 1984, and recorded the claim with BLM on June 14, 1984. 1/ A map accompanying the location notice filed for recordation shows the claim as being located within the W 1/2 SW 1/4 of sec. 11, T. 4 S., R. 92 W., sixth principal meridian, Colorado. The City of Rifle, Colorado, acquired the W 1/2 W 1/2 of sec. 11,

1/ None of the other four individuals have joined appellant in the appeal. However, in his appeal appellant also purports to represent Phantom Mining. The interest of Phantom Mining in this claim has not been disclosed by appellant. The regulations at 43 CFR 3833.3 require that BLM be notified of any transfer of interest in a recorded unpatented mining claim.

T. 4 S., R. 92 W., sixth principal meridian, among other lands in secs. 2, 11, 14, and 15, by patent No. 829222 on October 21, 1921. The patent issued pursuant to the Act of June 7, 1910, 36 Stat. 459. 2/ The patent itself contained the following reservation:

> [R]eserving therefrom to the United States all oil, coal and other mineral deposits that may be found in the land, and all necessary use of the land for extracting the same; TO HAVE AND TO HOLD the land, subject to all the restrictions, conditions, reservations, and purposes and all reversions in said Act expressed.

The basis for the reservation was the language of the Act of June 7, 1910, which provided for such a reservation.

BLM in its decision declared the Aparition #2 claim null and void because, although the mineral estate in the land had been reserved to the United States, there had been no authorization for disposal of those minerals by location under the mining laws. BLM relied on City of Phoenix v. Reeves, 14 IBLA 315, 81 I.D. 65 (1974), and Solicitor's Opinion, M-36279 (July 19, 1955).

Bradley assigns three grounds for appeal. First, he asserts that the ground described by the Aparition #2 location embraces old mine workings and that this mining was undertaken when the City of Rifle owned the surface. He believes this has established a precedent for allowing mining. Next he attacks the Reeves decision, quoting various parts, and concludes that Reeves, which involved a sand and gravel claim, does not constitute a valid reason for invalidating the Aparition #2. Finally, he argues that unlike a sand and gravel claim, the Aparition #2 is a lode claim which will be worked underground with very little surface disturbance.

In response to the statement of reasons the City of Rifle filed an answer arguing for affirmation of the BLM decision and stating that the case and Solicitor's Opinion cited by BLM clearly provide that patenting public lands removes them from disposal under the mining laws unless exploitation of the reserved mineral estate is expressly authorized in some other manner. The City of Rifle asserts that it is the position of the Department that the mining laws do not apply unless the United States owns both the surface and mineral interest, or there is express statutory or regulatory authority allowing mineral location on the reserved estate. The City of Rifle denies

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2/ The Act of June 7, 1910, 36 Stat. 459-61, provided for the granting of public lands to certain cities and towns in Colorado for public-park purposes. The land described in the Act for transfer to the City of Rifle was "that portion of sections three and ten, in township four south, range ninety-two west, of the sixth principal meridian, adjacent to and including Box Canyon of Rifle Creek, containing three hundred and twenty acres, more or less." The record indicates that at the time of passage of the Act the Box Canyon area was unsurveyed. After survey, the City of Rifle applied for, and received, the lands described in the patent.

that any mining has taken place on the land in question since issuance of the patent, but even if mining has taken place, it contends that it has not consented to mining nor can it do so because the minerals are reserved to the United States. Finally, minimal surface disturbance is irrelevant, the City of Rifle argues, since any mining on the patented land is inconsistent with the purpose for the patent.

[1] We affirm the BLM decision. In City of Phoenix v. Reeves, supra, a question arose over the validity of certain sand and gravel claims located on lands patented to the City of Phoenix pursuant to the Act of July 15, 1921, 42 Stat. 143, with a reservation of the minerals to the United States. The Board found two bases on which to declare the claims null and void. First, an executive order temporarily withdrew the lands involved from non-metalliferous mineral location on January 21, 1921. The Board held that the withdrawal remained in effect even after the Act of July 15, 1921, and the subsequent patenting of the land. 14 IBLA at 326, 81 I.D. at 70. Second, and most importantly for this case, the Board, in reliance on Solicitor's Opinion, supra, held that when public lands are disposed of with a reservation of the minerals to the United States, the mining laws do not apply to those reserved mineral deposits in the absence of specific statutory disposal authorization. 14 IBLA at 327-28, 81 I.D. at 70.

Even where a statute provides for patenting lands with a mineral reservation and disposition of those reserved minerals in accordance with regulations to be established by the Secretary of the Interior, absent any regulations, the Department has concluded on numerous occasions that the land is not open to location under the mining laws. George Schultz, 81 IBLA 29, 37 (1984); Cruz G. Velasquez, 78 IBLA 355, 356 (1984); Dredge Corp., 64 I.D. 368, 374 (1957), aff'd, Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966).

When Congress itself has intended to authorize mineral location of reserved minerals, it has expressly done so in the legislation providing for the reservation. See section 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1982); section 8 of the Taylor Grazing Act, 43 U.S.C. § 315g(d) (repealed by section 705(a) of the Federal Land Policy Management Act of 1976, 90 Stat. 2792); section 1 of the Color of Title Act, 43 U.S.C. § 1068 (1982).

The Act of June 7, 1910, authorizing the patent in this case, contained no express provision for disposition of reserved minerals under the mining law. No regulations have been promulgated by the Department authorizing mineral locations on the lands in question. Therefore, the lands embraced by the patent to the City of Rifle have not been subject to mineral location since the date of issuance of that patent. The Aparition #2 claim, having been located within the boundaries of that patent, is null and void ab initio.

Appellant's assertion relating to previous mining activity in the area of the claim bears no relevance to the result of this case whether such activity was undertaken prior to patent or not. Appellant's location was made when the lands were not open to the mining laws; it is null and void ab initio. Likewise, the fact that appellant's mining activity might cause only minor surface disturbance is of no moment. All mining activity is precluded.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge